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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,002	04/14/2000	Paul C. Hassler	7330*1	7996

23416 7590 05/31/2002

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EXAMINER

MARKOVICH, KRISTINE M

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/31/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/549,002

Applicant(s)

HASSLER, PAUL C.

Examiner

Kristine M. Markovich

Art Unit

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-7, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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***Response to Amendment***

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1-7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaftner (US Patent 5,308,188)

Shaftner discloses a resilient, replaceable collar having a body with upper and lower surfaces (10, figure 1). An opening is provided through the center and sized to accommodate the outer periphery of the roadway structure (12, figure 1). The side walls of the collar are sloped and extend downward from the upper surface of the body to the lower surface of the body (11, figure 1). The upper surface of the body is in substantially planar alignment with the upper surface of the roadway structure (figures 2 and 3).

At least one resilient riser is provided between the lower surface of the collar body and an upper surface of the roadway pavement. The resilient riser has a thickness such that the collar body and resilient riser together have a height substantially equal to the distance the roadway structure extends above the roadway pavement (column 3, lines 42-44 and 50-53).

Regarding claims 2 and 10, the riser/collar is made from an elastomeric material (column 2, lines 1-3 and column 3, lines 54-57). Regarding claim 3, the specific roadway structures it surrounds are utility access holes, such as manhole covers, gas and water utility covers, storm

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sewer inlets, etc (column 1, lines 9-11). Regarding claims 4 and 5, the roadway pavement is stripped such that the collar is used for placement around an access hole which is temporarily elevated (column 1, lines 9-18). Regarding claim 6, the collar is circular with a central circular opening to snugly engage the access hole. Regarding claim 7, the collar can also be designed to be rectangular in shape with a circular central opening (figure 4). The collar body has a height equal to the distance the roadway structure extends above the roadway pavement (figures 2 and 3). The collars can be stacked one on top of the other to provide for a riser effect such that together they have a height equal to the distance the roadway structure extends above the roadway pavement (column 1, lines 50-52, column 3, lines 39-44).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

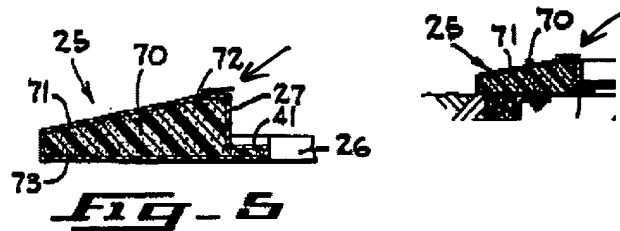
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaftner in view of Grosh (US Patent 3,974,599) .

Shaftner discloses the claimed device except for the upper surface of the body being substantially planar. Grosh discloses that it is known in the art to provide an upper surface of a ramp member leading to a utility access device to be substantially planar (see figure below). It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to provide the ramp of Shaftner with the planar upper surface of Grosh, in order to allow for a flush fit, and therefore a smooth transition along the top of a grating or manhole cover.



### ***Response to Arguments***

5. Applicant's arguments filed 2/19/02 have been fully considered but they are not persuasive.

Applicant's clarification of the claims in the most recent amendment states that (page 3, lines 2-5) "claim 1 is not limited to a substantially planar upper surface of the body, but rather an upper surface of the body that is in substantially planar alignment with an upper surface of the roadway structure". Applicant further states that "claim 11 limits the upper surface of the body to a substantially planar upper surface." Based on these clarifications, examiner contends that the Shaftner reference clearly anticipates applicant's invention as claimed. The innermost edges of the ramp of Shaftner clearly are intended to meet the top portion of the manhole of which it surrounds. Additionally, multiple ramp members act as "risers" such that if the height of one ramp member is not sufficient, "one of each doubled would provide the same...ramp". (column 3, lines 52-53) Applicant does not provide sufficient structural detail in the claim limitations as written to overcome the Shaftner reference, nor to limit examiner in using the additional ramp

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members of Shaftner as "collars". Applicant argues the awkwardness of using sloped surfaces in a stacked relationship. This is not of consequence, but it can be argued that with such small slopes and having the manhole to hold the staked collars which are stacked firmly in place, application of this invention is possible and is sufficient to overcome applicant's claims. Once again examiner contends that the claim limitation for the resilient collar is not detailed enough structurally to read over the Shaftner reference. Shaftner clearly teaches stacking to modify the ramp height to fit the height of the manhole exposed above the surface of the roadway which is all that is claimed by applicant.

Regarding the use of Grosh in use with the Shaftner reference, Grosh is used simply to teach the use of a planar upper surface of a ramp member. Every other claim limitation of applicant's invention has been met by Shaftner. The teaching of designing a ramp such that the top portion levels and is planar to the member beside it is known in the art, and therefore lacks novelty.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

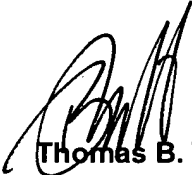
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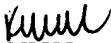
calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristine M. Markovich whose telephone number is (703) 305-1676. The examiner can normally be reached on Mon-Fri from 8:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703) 308-3870. The fax phone number for this Group is (703)305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

  
KMM  
May 27, 2002